One of the duties of the commission as outlined in Burns' 40-2312, *supra*, is as follows:

“(d) To formulate policies to effectuate the purposes of this act * * *”

One of the purposes of the act is to prohibit discrimination in “employment.” The commission must therefore determine for itself whether there is an unlawful discriminatory practice in “employment” and seek to effectuate the purposes of the act as outlined in Burns' 40-2309, *supra*.

The answer to your question therefore cannot be given in terms of the Civil Rights Act. In short, it makes no difference as far as the Civil Rights Act is concerned whether an individual is an “employee” or an “independent contractor.” The act does not speak in terms of such a distinction. The crucial question for the commission is whether a condition exists between two persons which can be called an “employment.” This determination can only be made by the commission, keeping always in mind the purpose of the act as set out above.

OFFICIAL OPINION NO. 50

September 1, 1964

Mr. James C. Courtney, Commissioner
Indiana Department of State Revenue
202 State Office Building
Indianapolis, Indiana

Dear Mr. Courtney:

This is in response to your recent letter in which you requested an Official Opinion upon the following question:

“Will you please advise me by way of an official opinion whether the transfer of proceeds (such as crops, timber, rentals, monies, sale price, etc.) derived from entireties owned property to the surviving spouse is taxable upon the death of one of the spouses under the provisions of Section 1 of the Inheritance Tax Law of the State of Indiana, Acts of 1931, ch.
75, sec. 1, paragraph 5, Burns 7-2401, 1953 Replacement.

“Reference is particularly made to the proviso of paragraph 5 of the above cited section wherein it is provided:

“Provided, however, that property jointly held shall not be taken to include real estate held by the entireties. (emphasis added)"

The section of the Inheritance Tax Law which concerns the problem set out above is Acts 1931, Ch. 75, Sec. 1, as found in Burns’ (1953 Repl.), Section 7-2401, and reads, in part, as follows:

“Whenever property is held in the joint names of two [2] or more persons or is deposited in banks, or other institutions or depositaries in the joint names of two [2] or more persons and payable to either or the survivor, upon the death of one [1] of such persons, the exercise of the right of the surviving person or persons to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this act in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased joint owner or joint depositor and had been devised or bequeathed to the surviving person or persons, by such deceased joint owner or joint depositor by will, excepting therefrom such part thereof as may be proved by the surviving joint owner or joint owners to have originally belonged to him or them and never to have belonged to the decedent: Provided, however, That property jointly held shall not be taken to include real estate held by the entireties.”

An analysis of the above paragraph reveals that jointly-held property is the subject of taxation for inheritance tax purposes and that the exercise of the right of the surviving person or persons to the immediate ownership or possession of such jointly-held property is deemed a taxable transfer. The paragraph ends with a proviso that real estate
held by the entireties shall not be included as jointly-held property. The paragraph further reveals that jointly-held property passing to the survivor is not exempt except under certain stipulated conditions.

Indiana has long recognized tenancy by the entireties in real estate. 15 I.L.E. Husband and Wife §§ 84, 85 and 86, pp. 457 to 462. The law is not quite as clear as to the holding of personal property as tenants by the entireties.

A tenancy by the entireties "* * * may be said to be a joint tenancy modified by the common law principle that the husband and wife are but one person * * *" Minor & Wurtz, Law on Real Property, Section 744 (1909). Additionally, a tenancy by the entireties is merely a joint tenancy "* * * plus the unity of the marital relation * * *" Hoyt v. Winstanley (1922), 221 Mich. 515, 191 N. W. 213. Thus, it is apparent that a tenancy by the entireties is merely a form of joint tenancy and, as a tenancy by the entireties, holds title in the joint names of husband and wife. It follows that a tenancy by the entireties falls within the meaning of Section 1 of the Inheritance Tax Law, supra, and would be included therein as subject to the tax except for the specific exemption granted.

Indiana does recognize tenancy by the entireties in personality in certain instances. In Koehring v. Bowman et al. (1924), 194 Ind. 433, 142 N. E. 117, 118, the Supreme Court of Indiana said as follows:

"* * * Estates by entireties do not exist as to personal property (Abshire v. Williams, 53 Ind. 64, 66) except when such property is directly derived from real estate held by that title, as crops produced by the cultivation of lands owned by entireties or proceeds arising from the sale of property so held. Patton v. Rankin, 68 Ind. 245, 247, 34 Am. Rep. 254; Mercer v. Coomler, 32 Ind. App. 533, 69 N. E. 202, 102 Am. St. Rep. 252; Frost v. Frost, 200 Mo. 474, 98 S. W. 527, 118 Am. St. Rep. 689; 13 Ruling Case Law, 1106, § 128."

See also: Patton, Administrator v. Rankin (1879), 68 Ind. 245;
Sharpe v. Baker (1911), 51 Ind. App. 547;
Whitelock v. Public Service Company of Indiana (1959), 239 Ind. 680, 159 N. E. (2d) 280;

The question yet remains: Does the Indiana Inheritance Tax Law exempt from taxation personal property held by the entireties? Reference is again made to Section 1, supra, and more particularly to the proviso which reads "* * * Provided, however, That property jointly held shall not be taken to include real estate held by the entireties." (Our emphasis)

The present Inheritance Tax Law was enacted in 1931 at a time when the law concerning personal property held by the entireties was well established, and it is reasonable to assume that the Legislature had knowledge of this law when the present Inheritance Tax Law was enacted. With this knowledge the Legislature chose to specifically exclude from taxation only real estate held by the entireties. No mention is made of personal property held by the entireties.

A review of the statutes and cases of the various states reveals that property held by the entireties is usually treated and taxed in the same manner as other jointly-held property. Estate of Abernathy v. Boyd (Tenn. 1962), 362 S. W. (2d) 350. Some states exempt all property held jointly by husband and wife. Vermont Inheritance and Estate Tax Law, Section 6543. There appear to be no cases in point on the question you have propounded.

As hereinbefore mentioned, a tenancy by the entireties is a particular and distinct type of joint tenancy, and the Indiana Appellate Court has recognized that the surviving tenant takes by right of survivorship. "* * * A conveyance of land to a husband and wife creates a tenancy by entireties and the survivor takes the whole by his right of survivorship * * *" Tharp v. Updike (1913), 55 Ind. App. 455.

The authorities uniformly hold that exemptions in taxing acts are to be strictly construed against the exemption and
in favor of the state. Storen v. Jasper County Farm Bureau Cooperative Association (1936), 103 Ind. App. 77, 2 N. E. (2d) 432; Greenbush Cemetery Association v. Van Netta (1911), 49 Ind. App. 192, 94 N. E. 899. Without citing authority, Henry's Probate Law and Practice states "* * * To the extent that personality is held as tenants by the entireties it is taxable * * *" 2 Henry's Probate Law and Practice, p. 1886 (6th Ed. 1954).

In rendering this Opinion a previous Opinion of the Attorney General has not been ignored; however, in that Opinion the exact status of personality held by the entireties for inheritance tax purposes is not clear. 1938 O. A. G., p. 40.

In conclusion, therefore, it is my opinion that even though personal property may be held by the entireties in Indiana, such property is not exempt from inheritance tax under the provisions of Section 1 of the Indiana Inheritance Tax Law.

OFFICIAL OPINION NO. 51

September 4, 1964

Hon. Charles O. Hendricks
Secretary of State
201 State House
Indianapolis, Indiana

Dear Secretary Hendricks:

I am replying to your letter of August 18, 1964, wherein you ask the following question:

"Request an official opinion be issued this office to clarify the filing fees to be charged for the extension, renewal, amendment, continuation, marginal release, and written release affecting chattel mortgages recorded prior to July 1, 1964, the effective date of the Uniform Commercial Code, Acts 1963, Ch. 317, found in Burns' (1964 Repl.), Section 19-1-101 et seq."

As you note in your letter, the Uniform Commercial Code (hereinafter sometimes referred to as the Code), Acts 1963, Ch. 317, the same being Burns' (1964 Repl.), Section 19-1-